

1 **Steve Wilson Briggs**

2 681 Edna Way

3 San Mateo, CA 94402

4 510 200 3763

5 snc.steve@gmail.com

6 PLAINTIFF In Propria Persona

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 STEVE WILSON BRIGGS

11 Plaintiff,

12 vs

13 UNIVERSAL PICTURES, et al.,

14 Defendants.

) Civ No: CV 17 6552 VC

) **PLAINTIFF'S OPPOSITION TO**
) **DEFENDANT NBCUNIVERSAL'S**
) **MOTION TO DISMISS**

) Judge: The Honorable Vince Chhabria

) Date: February 22th, 2018

) Time: 10:00 a.m.

) Courtroom: 4

15
16 **PLAINTIFF'S OPPOSITION TO DEFENDANT NBCU'S MOTION TO DISMISS**

17 **INTRODUCTION:**

18 Plaintiff Steve Wilson Briggs hereby submits this **Opposition** to Defendant(s) NBCU's
19 Motion To Dismiss First Amended Complaint and Memorandum Of Points And Authorities.

20 With the default deadline nigh, in response to the Plaintiff's Complaint, on December
21 28, 2017, the Defendants (Defs) submitted a flawed and misleading Motion to Dismiss,
21 which the Plaintiff successfully opposed.

22 January 2nd, 2018, Plaintiff submitted his First Amended Complaint (**FAC**): 60 pages
23 of irrefutable facts, with 39 exhibits (contracts, interrogatories, and news articles about the
24 Defs, **in their own words**). Left with no plausible denials to file a traditional Answer, the
25 Defs were forced to file a Motion To Dismiss. But knowing any such Motion would have no
26 merit, the Defs chose a rash strategy: **file 2 simultaneous motions to dismiss** (hoping to
27 overwhelm the Plaintiff, or frustrate the Court into granting one of these dishonest Motions).

28 The Defs' Motion(s) throw in every imaginable defense and harangue that the FAC is

1 somehow deficient, as if acrimony were an alternative to law. But **this Opposition** confirms
2 the Plaintiff's FAC is, in fact, quite sound.

3 Contrary to the Defs' protestations, **California recognizes conspiracy** as "...a legal
4 doctrine that imposes liability..." And CA Civ Jury Instructions (CACI) 3600 explains:

5 **A conspiracy may be inferred from circumstances, including the nature of the**
6 **acts done, the relationships between the parties, and the interests of the**
7 **alleged coconspirators. [Name of plaintiff] is not required to prove that [name**
8 **of defendant] personally committed a wrongful act or that [he/she] knew all**
9 **the details of the agreement or the identities of all the other participants.**

10 In accord with CACI 3600, the **Plaintiff does NOT need to prove any Defendant**
11 **committed any wrongful act**, AND a jury may INFER a conspiracy from factors such as
12 circumstances, the nature of the acts done, the relationships between the parties, and the
13 interests of the alleged co-conspirators

14 In concert with CACI 3600, the Plaintiff's FAC carefully includes details that establish
15 circumstances, Defendant relationships, nature of the acts done, and shared interests of the
16 Defendants, to help the Court and all jurors comfortably decide in the Plaintiff's favor.
17 THIS is why the Defendants are frantically trying to stop this action.

18 NBCU's Motion divides its time making spurious arguments for dismissal, and making
19 veiled entreaties to the Court to extricate NBCU, whom they falsely portray as faultless. But
20 3 of the 5 Defense attorneys work for **NBCU**, because NBCU has tremendous exposure.

21 The Def's Motion claims spoliation is not Causes of Action in California. But, in fact:

- 22 1. California allows spoliation claims (per *Cedars-Sinai Med. Ctr. v Superior Court*
23 (1988) 18 C4th 1, 17, 74 CR2d 248) **in cases such as this**, when: **(A)** the spoliator is
24 not a party to the lawsuit, but a third party with a duty to preserve the evidence; or
25 **(B)** when the spoliation victim does not learn of the spoliation until after trial or a
26 decision on the merits (as in this case: Plaintiff learned 15 months after the decision.)

27 Two of the more of the more interesting commonalities about these two Motions are:

- 28 1. Neither Motion mentions the *Breach of Contract* claim;
2. Neither Motion denies Defs Spacey and/or Brunetti destroyed TriggerStreet.

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MEMORANDUM OF POINTS AND AUTHORITIES

LEGAL STANDARD

DISMISSAL

- The FRCP 12(b)(6) instructs the court must “accept factual allegations in the complaint as true and construe the pleadings **in the light most favorable to the nonmoving party**.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).
- The court must: “read the complaint generously and draw all reasonable inferences in favor of the plaintiff.” *Kniesel v. ESPN*, 393 F.3d 1068, 1080 (9th Cir. 2005).
- If motion to dismiss is granted, a court should grant leave to amend unless it determines the pleading could not possibly be cured by allegations of other facts. *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990).

STATING THE CLAIMS

- *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)(citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) stated: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.
- *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), made a nuanced change to *Conley v. Gibson*, as *Twombly* specified that a complaint need not contain detailed factual allegations, but only allege “**enough facts to state a claim to relief that is plausible on its face.**”
- In 1957, *Conley v. Gibson*, 355 U.S. 41 (1957) established the current standard stating: “**a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief**”

STATEMENT OF FACTS

This matter has some unquantified relationship to the Prior Action Briggs v Blomkamp, et al, CV134679-PJH.

In Prior Action Briggs v Blomkamp: The Complaint explained that in May of 2013, the Plaintiff walked into a movie theater and saw a trailer of a soon-to-be-released film that looked almost identical to the Plaintiff's screenplay. The Plaintiff then sued for one (1) Cause of Action: Copyright Infringement. The Plaintiff lost on summary judgment. The matter is now in the Ninth Circuit Court of Appeals.

In this matter, Briggs v Universal Pictures, et al: In 2016, 15 months **after** the Prior Action went to appeals, the Plaintiff learned that Defs Spacey and Brunetti went to Spain and London to promote the content of their **social network** TriggerStreet.com (TS), which was in violation of TS contract Terms of Use, which stated TS was intended solely for use in the USA. (This was a clear Breach of Contract and it was Fraud and Copyright Infringement; thus it forms the basis for this suit's Breach, Fraud and Infringement causes.)

As the Plaintiff continued to review the various contract pages he found other instances of fraud and deceit; thus, the Deceit claim.

Approximately simultaneous to these discoveries, the Plaintiff learned that the Defs closed the TS website 6 days after the Prior Action went to appeals. This was a clear effort to destroy evidence. This informs both the *spoliation* and *conspiracy* claims.

Eventually the Plaintiff learned that the man the Defendants hired as their "expert" witness in Brigg v Blomkamp, Jeff Rovin, went on national TV (FOX News' Sean Hannity Show) to tell the world that he (Rovin) worked for years for President Bill Clinton's administration as a "fixer" (someone paid to write false "smear" stories for tabloid news outlets about Clinton critics, and thereby make problems go away). Incidentally, Def Emanuel's brother, Rahm Emanuel, was Senior Advisor to President Bill Clinton.

The Plaintiff then realized that the Defendants hired Rovin to "fix" his expert report, to sabotage the Plaintiff's lawsuit.

With all of these facts (and many more), the Plaintiff took action, and sued the Defendants on November 13, 2017.

Briggs v Blomkamp (Prior Action) Facts

- In 2006 the Plaintiff joined Kevin Spacey’s online screenwriter and filmmaker social network “*Trigger Street*” (TS), located at TriggerStreet.com.
- The Plaintiff posted his screenplay (*Butterfly Driver*) on TS for most of 2007.
- The plaintiff remained a member of TS until it closed, October 2014.
- The Plaintiff believes that his work was accessed on TS, misappropriated and produced into the film *Elysium*, which was released in 2013.
- The Plaintiff discovered the infringement and in 2013. Three (3) of those Defendants are named in THIS suit; ten (10) defendants are new to this matter.
- In 2013, in news reports, Def Blomkamp stated that editing for the film *Elysium* ended in Feb or March of 2013. But based on information and circumstances, the Plaintiff predicted in his Complaint that after learning of the Plaintiff’s forthcoming lawsuit, Blomkamp and his editors went back in and re-edited the film to try to remove evidence of infringement (the headaches). Through Interrogatories, Def Blomkamp confirmed this prediction, and admit that editing ended in May or June, 2013. However, in response to the Plaintiff’s discovery requests, the Defs only provided a statement from editor Julian Clarke, and refused to provide a statement from the final editor Lee Smith, who would have confirmed that he was asked to remove the central headache scenes. This amounted to a Rule 37 violation.
- During the Prior Action, the Plaintiff discovered that the Defendant’s expert witness, Jeff Rovin, submitted falsified witness report which included a staggering number of false claims and fraud, and in which he substantially altered evidence to support his own false claims, which amounted to Committing Fraud Upon the Court.
- The Plaintiff reported Mr. Rovin’s fraud and falsification to the Court in a Motion to Disqualify/Exclude Rovin’s report. This motion, surprising the Plaintiff, was denied.
- The Plaintiff lost on summary judgement and the matter is currently in the appellate court, where it has been for almost 3 years.

Briggs v Universal Pictures, et al, (Current Action) Facts

- While the Prior Action was in appeals, in February 2016, the Plaintiff learned that between 2002 and 2009 Defendant Spacey and Brunetti went to London and to Spain to recruit new TS members. AND while in Barcelona, Spain Spacey boasted that TS had 400,000 member **around the world**, which was many more members than they plaintiff realized or had reported to the Court.
- Immediately, in February of 2016, the Plaintiff contacted the 9th Circuit Court of Appeal to inform them of the 400,000 member around the world (the Plaintiff did so to attend a question about “**widespread dissemination**”
- Shortly after that, the Plaintiff realized that Spacey’s and Brunetti’s travels to Spain and London to promote and recruit members for TS were a **Breach of Contract** of TS’s Terms Of Use, which stated that TS was solely for use in the USA. And Spacey’s statement that TS had “400,000 members around the world,” was an admission that he knew TS was operating in violation of TS’s terms of use. This was (and is) **Fraud**.
- The Plaintiff then went online to go to the TS website to read the Terms Of Use page. (This was February or March of 2016.)
- The Plaintiff discovered that the TS website was inexplicably closed.
- The Plaintiff went to “The Internet Archives” and a few other websites and discovered that 6 days after the Plaintiff filed his Notice Of Appeal to the 9th Circuit Court of Appeals.
- The Plaintiff then considered the facts and decided that the Defendants closed the TS social network website, immediately after they learned of the Plaintiff’s appeal, because they feared the Plaintiff would prevail (for numerous reasons—but primarily because the Plaintiff cited prevailing law, while the Defendants cited vacated law; thus, the matter would likely be returned to the lower court for trial, where the Plaintiff would subpoena all records from TS). This would present many impossible problems for the Defendants.

- One of the many reasons that the Plaintiff felt he would prevail on appeal was that the district court based its ruling on the Defendants' expert witness report of a man named Jeff Rovin. The witness report contained massive incidents of fraud and falsification, which the Plaintiff reported to the district court. Although the district court failed to take action on Rovin's fraudulent report, the Plaintiff felt that he had done an excellent job of documenting the fraud for the Appellate Court, and this would be another basis to return the case to the lower court.
- As the Plaintiff reviewed the Terms Of Use and other contract pages from TS, he learned of numerous violations and fraudulent statement contained therein. These false statement fortify the Causes of Action: Fraud /Intentional Misrepresentations, Deceit, and Concealment.
- As the Plaintiff researched the Defendants he discovered many published actions that they had taken that were in violation of the TS *Terms of Use*, or in violation of other state or federal law (or violations of basic ethics).
- The Plaintiff found evidence of a total disregard for most business ethics, uncovering NY Times and Los Angeles Times stories in which the Defendants' film industry peers anonymously sound the alarm about the Defendants shady relationships and disregard for business and labor codes.
- As the Plaintiff investigated Def Ari Emanuel's many unethical relationships with other Defendants, the Plaintiff learned that Def Emanuel and Def Spacey both worked for CAA talent agency back in the mid-late 1980s.
- The Plaintiff remembered that, like Def Spacey, Defs Damon and Affleck also had a filmmaker/screenwriter social network website (ProjectGreenlight.com), and Damon and Affleck were both represented by Def Emanuel or his talent agency WME.
- Defendant Emanuel was/is also the talent agent of Def Neill Blomkamp—the man the Plaintiff accused of misappropriating his screenplay in Briggs v Blomkamp.
- During this research the Plaintiff learned that Sony had purchased the rights to make Elysium from Blomkamp (\$100,000,000 budget) without ever reading a screenplay. This was reckless and negligent, and against all reasonable business practices.

- As the Plaintiff did more research on the Defendants' reckless and negligent conduct and business practices and relationships, he learned that in addition to Emanuel's questionable business relationships with Media Rights Capital, Def Emanuel was also secretly involved in owning a business with Def Bill Block and Sony Pictures' (then) CEO, in violation of California business codes.
- The Plaintiff then discovered the Defendants' expert witness had gone on Fox News' Sean Hannity Show (a major national TV show) to tell the world that he (Rovin) worked for years for President Bill Clinton's administration as a "fixer" (someone paid to write false "smear" stories for tabloid news outlets about Clinton critics, and thereby make problems go away). The Plaintiff then realized that the Defendants hired Rovin to "fix" his expert report to sabotage the Plaintiff's lawsuit.
- Def Emanuel's brother, Rahm Emanuel, worked for President Bill Clinton
- The Plaintiff determined that Def Emanuel was likely behind the entire conspiracy.
- The Plaintiff then sued the Defendants, November 13, 2017.
- The Defs responded with a tenuous and inaccurate Motion to Dismiss.
- The Defs' Motion was riddled with obvious falsehoods, errors, and oversights; therefore, the Plaintiff filed a Motion for Sanctions against the Defense Counsel.
- Shortly after suing the Plaintiff realized that Spacey and Brunetti's efforts to make TS available in foreign markets, and to recruit new members around the world, made the Plaintiff's work available all around the world—without the Plaintiff's consent. This was a new violation of the Plaintiff's exclusive copyright to distribute his work.
- Under copyright law the 3 year time limit to take action begins to count from the time the copyright owner learns of the infringement. The Plaintiff learned of the infringement on or around February, 2016. Thus, the Plaintiff's time limit to take action expires around February 2019.
- In light of these new facts, the Plaintiff filed his FAC, citing Infringing Exportation and Copyright Infringement among its 13 Causes of Action against the Defendants.
- In response, the Defs filed 2 separate, coordinated and deficient Motions to Dismiss.

ARGUMENT:**1. THE DEF'S MOTION FALSELY ASSERTS THAT THE FAC FAILS TO PROVIDE NOTICE OF THE BASIS FOR PLAINTIFF'S CLAIMS AGAINST NBCU**

The Defendant's claim that "the Plaintiff's FAC fails to provide notice of the basis of Plaintiff's claims against NBCU" (Universal Pictures) is deliberately and patently false.

The FAC shows Defs **Universal Pictures** and NBCU's motivation, their actions, and their financial reward for their engagement in the various infractions.

To reduce length, there is one detail about Def NBCU Plaintiff omitted from his FAC:

1. Universal Pictures (NBCU) originally agreed to co-finance Elysium (which may be an infringement of the Plaintiff's work).

The FAC shows Def **Universal Pictures** participated in a conspiracy among the Defs to enrich themselves by engaging in corrupt business practices; hence the Causes of Action: Negligence, Gross Negligence, Conspiracy and Violations Of Unfair Business Practices Act. **The FAC reveals the following facts (and realleges them in every Cause of Action):**

- A. The FAC Explains That Property Stolen (Perhaps By Other Defs) Repeatedly Came Into The Possession Of Def **Universal Pictures** (NBCU);
- B. The FAC Shows Def **Universal** (NBCU) Participated In Unscrupulous Engagements With The Other Defs, And Explains Why They Did So —In The Defs' Own Words!
- C. The FAC Reveals Why Def **Universal Pictures** Engaged In These Activities And Relationships —in Def Wiczuk's Own Words!
- D. The FAC Shows That Immediately After Spacey Formed Triggerstreet, Def **NBCU** Gave Spacey Unusually Generous Gifts That No Other Studio Would Offer;
- E. The FAC Shows That After Def Spacey Formed TS, **Universal Pics** Gave Def MRC A Huge Contract (When Other Film Companies Would Not Work With MRC);
- F. The FAC Shows **Universal Pictures** (NBCU) Gave Def Brunetti A Very Generous Opportunity That No One Else In Hollywood Has Given Brunetti (Before Or Since);
- G. Using The Defs Own Text Messages, The FAC Shows **Universal Pics** Was Used To Drive Up Bidding On Films Like "Steve Jobs"; Thus, **NBCU** Profited From, And Helped Other Defs Profit From Unethical (Likely Illegal) Actions.

(A) FAC EXPLAINS THAT PROPERTY STOLEN (PERHAPS BY OTHER DEFS)
REPEATEDLY CAME INTO THE POSSESSION OF DEF UNIVERSAL PICTURES

Paragraph 26 of his FAC the Plaintiff makes it clear that stolen property, acquired by Def Ari Emanuel, and being sold or coming into the possession of **Universal Pictures** was a recurring pattern in this Complaint:

26. This Complaint reveals Def Ari Emanuel lead a conspiracy to misappropriate ideas using TS and ProjectGreenlight.com (**Project Greenlight**), to market these ideas to his business partners at Sony Pictures, MRC, Universal Pictures, NBCUniversal, etc. Relevant to this, Def Emanuel or WME has represented Defs Ben Affleck and Matt Damon for most of their careers. Curiously, like Spacey, Affleck and Damon ran a screenwriter/filmmaker website, *Project Greenlight*, from 2000-05 and 2015-16. Curiously, both sites used peculiar language like *peer-to-peer*, and used *peer reviews* to weed out bad scripts. And curiously, Spacey, Damon and Affleck were the only celebrities with screenwriter websites from 2000-2014. In 2005, writer Joel Lamontagne sued Project Greenlight and **Harvey Weinstein’s Miramax**, alleging the TV series *Project Runway* (2005-present) was stolen from a treatment he submitted to Project Greenlight. The allegedly stolen work became the property of Universal Pictures’ parent, NBCUniversal. Def Emanuel’s shadowy projects eventually becoming the property of Universal is a recurring pattern in this Complaint.

(B) THE FAC ILLUSTRATES HOW DEF UNIVERSAL (NBCU) PARTICIPATED IN
UNSCRUPULOUS ENGAGEMENTS WITH THE OTHER DEFS,
AND EXPLAINS WHY THEY DID SO —IN THE DEFS’ OWN WORDS!

The FAC shows how Def **Universal Pictures** engaged in unscrupulous relationships and actions with the other Defs. Paragraph 47 and 48 of the FAC explain that Def Modi Wiczynski wrote a very controversial and unethical—but film-industry changing—”memo” in 1999. This memo, in which Wiczynski openly discussed violating state and federal business laws, would make Defs Wiczynski, Satchu, Emanuel and MRC considered pariahs by many ethical film producers in Hollywood. However, without regard for consequences, Def **Universal Pictures** would “headhunt” Wiczynski, and hire him away from Summit Entertainment, and promote him to Vice-President of Productions at **Universal Pictures** —because **Universal Pictures** wanted Wiczynski to reveal how the plan he hinted at in his

memo could be executed. Paragraph 47 and 48 of the FAC read:

47. In 1999, only 27 years old, Def Mordecai (Modi) Wiczyn, the new Senior Vice President of Production and Acquisitions at Summit Entertainment, LLC, sent out a memo titled "Another New Ball Game". That memo sent Hollywood's unethical establishment scrambling after massive new profits. Wiczyn's memo would be discussed in magazines and lounges for years. Within a year, in 2000 (likely at Def Ari Emanuel's bidding) **Universal Pictures** would steal Wiczyn away from Summit, making him VP of Productions. Two years later, Def Ari Emanuel made Wiczyn his **partner** at Endeavor Talent Agency.

48. In 2007, *Slate* remembered "the memo" in an article called "How An Agent Turned His Pie-In-The-Sky Memo into A Reality". (Said "Slate" article is attached as "**Exhibit I**" and is incorporated by reference as if fully set out herein.). Writer Kim Masters wrote:

...The memo predicted the decline of the studios, with filmmaking talent as the beneficiary. He also predicted that a management company with a lot of big stars would start to produce and own films. "The most immediate and pressing challenge would be to get the studios to carry the product," he said. The likelihood of a studio boycott was remote, he said, because "whichever studio was suffering at the time would probably break ranks in the name of short-term self-preservation." Hmm.

Michael Ovitz eventually tried to launch such a management company and failed. But Wiczyn's memo said the agencies could also carry out the change. "**A similar structure could be created which complies with the conflict-of-interest laws,**" Wiczyn wrote. "If [a] fund was created as a stand-alone entity and the agency had an arms-length service contract, they could avoid conflict-of-interest violations... Admittedly this is a delicate issue and a tough deal to pull off, but it's certain someone would try it." Why? The potential for enhancing agency commission was "too rich to ignore." **In fact, he said, an agency could double its annual revenues.**

These two paragraphs show Def Universal Pictures (NBCU) involvement in the unethical business arrangements and practices that would lead to, as the FAC explains, their relationship with Ari Emanuel, then to the creation of MRC, and soon after, to their relationship with Def Spacey and Brunetti (who would subsequently commit numerous infraction against the Plaintiff). These two paragraphs also explain why Def **Universal Pictures** pursued Wiczyn: to engage in the scheme he outlined in the "memo."

(C) THE FAC REVEALS WHY DEF UNIVERSAL PICTURE ENGAGED IN THESE
ACTIVITIES AND RELATIONSHIPS —IN DEF WICZYK’S OWN WORDS

Wiczuk’s “memo” was effectively a resumé or a job application. For an agency to implement his plan, they would need to hire him, as the plan was more intricate than the short *memo* revealed. But Wiczuk’s *memo* explains why a studio would risk forming the potentially illegal “hybrid” studio/talent agency described in his memo, stating:

"whichever studio was suffering at the time would probably
break ranks in the name of short-term self-preservation."

With those words, Wiczuk predicted that whichever studio was least profitable would break ranks and try his new scheme. The FAC explains in paragraph 55 that the year before Def Wiczuk published his “memo” **Universal Pictures** had been in last place among the big Studios for three (3) consecutive years:

55. Bronfman Jr. was in trouble in 1998, and most of Hollywood knew it. Bronfman Jr. came to power in 1995 with Universal in 4th place among the big six studios (20 Century Fox, Disney, Paramount, Warner Bros., Sony Pictures, Universal Pictures). But only one year later, in 1996, Universal was in last place. And last again in 1997. And in 1998, even worse: last place, and Universal had one of its worst years ever, with only a 5.9% market share. Stockholders were restless. (See **Exhibit J**.)

This situation—being in last place 3-years running—is why **Universal Pictures**, paid close attention when Wiczuk published his memo in 1999. And it is why **Universal** broke ranks and hired Wiczuk in 2000, just as Def Wiczuk’s memo predicted.

(D) THE FAC SHOWS THAT IMMEDIATELY AFTER SPACEY FORMED
TRIGGERSTREET, UNIVERSAL PICS GAVE SPACEY UNUSUALLY GENEROUS
ROLES THAT NO OTHER STUDIO WOULD OFFER —NOT EVEN SPACEY’S
HOME STUDIO, WARNER BROS

On paragraphs 91, 92 and 101, the FAC shows how Def Spacey received over-generous rewards from Def **Universal Pictures**, after Spacey formed the TriggerStreet (TS) network.

- 91. KPAX was released Oct 2001. It would be the first time **Universal Pictures EVER** cast Kevin Spacey in a leading role (in fact,

Universal had only ever cast Spacey in **one [1]** film, a **supporting** role, ten years prior, in 1990, in “Henry & June”). (*Spacey was most commonly cast in **Warner Bros** films and independent films.) Casting Spacey to star in K-PAX, a \$68 million film, at such a low point in Spacey’s career, was almost inconceivable. **Def Spacey wouldn’t star in a film with a budget over \$40 million for 5 more years** (Superman Returns). Spacey would only appear in one other Universal Pictures film, 2 years later, *The Life of David Gale*—originally a Warner Bros (Spacey’s stable) property that Universal Pictures optioned. Spacey just came with the deal.

• 92. A month after K-PAX was released, in November 2001, director/writer **Eliseo Subiela (via Jason Laskay)** **sued Universal Pictures**, Gene Brewer, et al, for plagiarizing his film *Man Facing Southeast*. The suit was eventually withdrawn when Subiela and Laskay could no longer afford to litigate against a giant corporation like Universal Pictures.

• 101. In **February 2003**, 3 months after TS launched, **Universal Pictures** distributed Spacey’s film “**The Life of David Gale**” (again, originally a property of Spacey’s home studio, Warner Bros). This would be the last time Universal Pictures would be involved in a Spacey film (to the date of the filing of this Complaint). Thus, the only two Universal Pictures films featuring Spacey as a lead are *K-PAX*, and *The Life of David Gale*.

(E) THE FAC SHOWS THAT AFTER DEF SPACEY FORMED TS, UNIVERSAL PICTURES (NBCU) GAVE DEF MRC A MASSIVE NEW CONTRACT

On paragraph 39 of the FAC the Plaintiff provides a New York Times article from 2007, in which established and ethical Hollywood film producers explain that they are wary of doing business with MRC because of MRC’s shadowy business practices. United Talent partner Jeremy Zimmerman explained, “What becomes critical is who is the management?” Then he rightly wondered: “What level of transparency are we going to have?”

Yet, in the face of the ethical doubts about MRC, paragraph 115 of the FAC explains that **Universal Pictures** gave MRC a giant 20 picture film mega-deal.

• 115. May 2010, “Deadline Hollywood” reported Defendant **Universal Pictures** and Defendant Media Rights Capital (MRC) announced a 20 picture, 5-year production and distribution deal. (Said “Deadline Hollywood” article is attached as “**Exhibit W**” and is incorporated by reference as if fully set out herein.) Thus, MRC’s (a company co-owned by Defendant Ari Emanuel) first mega-deal would be with **Universal Pictures**.

(F) THE FAC SHOWS THAT UNIVERSAL PICTURES (NBCU) GAVE
DEF BRUNETTI A VERY GENEROUS OPPORTUNITY THAT NO ONE ELSE IN
HOLLYWOOD HAS GIVEN BRUNETTI

The FAC shows that Spacey and Brunetti were credited with creating TriggerStreet, and that the first and only production company to hire Dana Brunetti as a producer, without Kevin Spacey or TS Productions attached, was **Universal Pictures**.

- 122. In 2015, Def Dana Brunetti produced his **first** solo effort (without Kevin Spacey or their *Trigger Street Production* company), **50 Shades of Grey**. *50 Shades of Grey* was, of course, distributed by Universal Pictures, apparently the only major distributor that will touch a Brunetti film (without Def Spacey or their *Trigger Street Productions* company attached)...

(G) USING THE DEFS OWN TEXT MESSAGES, THE FAC SHOWS THAT
UNIVERSAL PICS WAS SILENTLY USED TO DRIVE UP BIDDING ON FILMS LIKE
“STEVE JOBS”; THUS, THEY PROFITED FROM, AND HELPED OTHER DEFS
PROFIT FROM UNETHICAL (AND LIKELY ILLEGAL) ACTIVITIES.

Using the Defs’ own text message exchanges, paragraphs 126-141 the FAC shows Def Ari Emanuel lied to other Defs (Sony Pictures) or their agents, to drive up the bidding on the “Steve Jobs” Film. When his maneuver failed, Def **Universal Pictures** purchased the film rights —although **Universal** was never in the discussion to purchase the film rights.

The FAC concludes this passage of the FAC in paragraphs 140 and 141, explaining how Def Ari Emanuel used Universal Pictures to hedge his bets with the other Defendants:

140. Def Ari Emanuel had just been playing the ace up his sleeve; trying to push the price of the film above market value, to increase his profit margin. He didn’t need Sony Pictures to give him standard market value for “Steve Jobs”, he could get standard value from Universal Pictures. When the maneuver failed, and Sony Pictures backed out, Def Ari Emanuel took the film to the Studio that has distributed all of his films, since around 1999.

141. On September 5th, 2015, 10 months after Sony Pictures declined on “Steve Jobs”, after so much posturing and tumult, “Steve Jobs” was distributed by Universal Pictures.

The FAC shows Def NBCU’s continuous engagement in the Causes of Action of Negligence, Gross Negligence, Conspiracy and Violation Of Unfair Business Practices Act.

**2A. THE DEFS FALSELY CLAIM THE FAC IS AN IMPROPER COLLATERAL
ATTACK ON THE DISMISSAL OF PLAINTIFF’S PRIOR LAWSUIT**

The Plaintiff’s FAC is not a collateral attack. Although collateral attacks are not necessarily prohibited (thus, the Defense Counsel’s carefully uses the phrase “**improper collateral attack**”). But, again, the Plaintiff’s FAC is not a collateral attack, but an entirely new, and valid, lawsuit.

Cornell Law’s Wex Legal Dictionary defines *Collateral Attack* as an “attack on a prior judgment in a new case (i.e., not by direct appeal).”

Such a collateral attack requires:

1. The same parties to be named in the new case.
2. The same causes of action in the new action.

3. The claims or causes of action must have been addressed in the prior order or judgment.

None of these conditions are met between the Prior action (Briggs v Blomkamp) and the current action (Briggs v Universal Pictures, et al). Rein v. Providian Fin. Corp., 270 F.3d 895, 902 (9th Cir. 2001), explains:

“The collateral attack doctrine precludes litigants from collaterally attacking the judgments of other courts. See Celotex Corp. v. Edwards, 514 U.S. 300, 313, 115 S.Ct. 1493, 131 L.Ed.2d 403 (1995) (“We have made clear that [i]t is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decisions are to be respected.”) (internal quotation marks omitted) (alteration in original). Here, the collateral attack doctrine does not apply to Frenette because his claims were never addressed by a prior order or judgment.”

To support their false claim that the Plaintiff’s FAC is an improper collateral attack on the dismissal of the Plaintiff’s prior lawsuit, the Defense Counsel made brief and superficial citations of several lower court and outer court decisions. The only citation that the Defense Counsel made that is relevant is the Rein v. Providian Fin. Corp., 270 F.3d 895, 902 (9th Cir. 2001) (above). However the Defense Counsel truncates their citation, quoting only the first sentence of the paragraph, to mislead the Court.

**2B. Redundant to the “Collateral Attack” claim, The Defs Also Falsely Claim
The Plaintiff Is “RE-LITIGATING” the Prior Action**

The Defense Counsel has stridently reiterated, ad nauseum, the false claim that the Plaintiff is trying to re-litigate Prior Action Briggs v Blomkamp, et al. This transparently false defense puts the Plaintiff in the unfortunate position of perhaps annoying the Court by over-defending the Defense Counsel’s obviously absurd attack. But since the Defense Counsel has repeatedly made that claim, the Plaintiff must take that risk.

In Briggs v Blomkamp, Plaintiff walked into a movie theater and saw a trailer that was identical to his screenplay, then sued for one (1) Cause of Action: Copyright Infringement.

In this matter, the Plaintiff learned (15 months after the Prior Action went to appeals) that Defs Spacey and Brunetti had gone to Spain and London to promote the content of their social network TriggerStreet.com (TS). This was in violation of TS contract Terms of Use, which stated TS was intended solely for use in the USA. This was a clear breach of contract and it was fraud, thus it formed the basis for this suit’s *Breach of Contract* and *Fraud* Causes of Action. (These facts also support the infringement Cause of Action.) As the Plaintiff reviewed the various TS contract pages he found other instances of fraud and deceit; furthering the Fraud Cause, and establishing other Causes, such a Deceit, etc. Virtually simultaneous to these discoveries the Plaintiff learned that the Defs closed the TS website 6 days after the Prior Action went to appeals. This was a clear attempt to destroy evidence; thus the *spoliation* claim. All of this also fortifies the *conspiracy* claims.

**2C. Redundant to both the “Collateral Attack”, and “Relitigating” Defenses, The Defs
Falsely And Senselessly Assert A RES JUDICATA Defense Against The FAC**

The Defense Counsel suggest the Plaintiff’s FAC violates the principle of Res Judicata (see Motion to Dismiss, page 6). The conditions for raising a Res Judicata defense are clear and DO NOT apply in this case. To assist the Court the Plaintiff provides the following definition **and examples** of Res Judicata from Cornell Law School’s Wex Legal Dictionary:

Generally, *res judicata* is the principle that a cause of action may not be relitigated once it has been judged on the merits. "Finality" is the term which

refers to when a court renders a final judgment on the merits.

Res judicata is also frequently referred to as "claim preclusion," and the two are used interchangeably throughout this article.

Breaking Down the Concept

Claim preclusion can be best understood by breaking it down into two sub-categories:

1. **Bar** - a losing plaintiff cannot re-sue a winning defendant on the same cause of action
 1. example: Plaintiff P sues Defendant D on Cause of Action C, but loses. P may not try for better luck by initiating a new lawsuit against D on C.
2. **Merger** - a winning plaintiff cannot re-sue a losing defendant on the same cause of action
 1. example: Plaintiff P successfully sues Defendant D on Cause of Action C. P may not again sue D on C to try to recover more Damages.

The conditions for a Res Judicata defense are not present or satisfied in this matter, as the facts of this matter are entirely new, unique and separate, and derive from entirely new, unique and separate events, and involve 10 new Defendants.

Rein v. Providian Fin. Corp., 270 F.3d 895, 902 (9th Cir. 2001), clarified:

Res judicata, or claim preclusion, provides that a final judgment on the merits of an action precludes the parties from relitigating all issues connected with the action that were or could have been raised in that action. See *In re Baker*, 74 F.3d 906, 910 (9th Cir.1996). Claim preclusion is appropriate where: (1) **the parties are identical or in privity**; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) there was a final judgment on the merits; and (4) **the same claim or cause of action was involved in both suits**. *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir.2001); *Siegel v. Federal Home Loan Mortgage Corp.*, 143 F.3d 525, 528-29 (9th Cir.1998).

Once again, the conditions necessary to make a Res Judicata claim or defense are not satisfied here, as:

1. the parties are not identical (there are 10 parties not named in Prior Action);
2. the claims are not the same (there are 12 new claims in this matter, and the copyright infringement claim is unrelated and made against different Defendants).

The facts and causes of actions of the two matters are not related. In Prior Action (*Briggs v Blomkamp, et al*), the Plaintiff walked into a movie theater and saw a trailer of a

1 movie that looked identical to his screenplay, then sued for one (1) Cause of Action:
2 Copyright Infringement.

3 In this matter, the Plaintiff learned (15 months after the Prior Action went to appeals)
4 that Defendants Spacey and Brunetti went to Spain and London to promote the content of
5 TriggerStreet.com (TS), in violation of TS contract Terms of Use, which stated TS was
6 intended solely for use in the USA. This was breach of contract and fraud. Thus, these
7 events are the basis for this suit's Cause of Action *Breach of Contract* and *Fraud*. As the
8 Plaintiff reviewed the various contract pages he found other instances of fraud and deceit;
9 furthering the *Fraud* Cause, and initiating other Causes, such a Deceit. Around this same
10 time, the Plaintiff learned that the Defendants had closed the TriggerStreet social network
11 only six (6) days after the Prior Action went to appeals. This informs the spoliation claim.
12 Shortly thereafter, the Plaintiff learned that the Defs' expert witness in Briggs v Blomkamp
13 admitted on national TV (in 2016) that he was a "fixer"—a person hired to produce false
14 stories and smear people. All of this informs the conspiracy claim.

15 16 **3A. DEFENDANT FALSELY CLAIM CALIFORNIA DOES NOT** 17 **RECOGNIZE CIVIL CONSPIRACY**

18 Contrary to what the Defendants have falsely proffered, for decades, perhaps from its
19 inception, California has recognized actions for civil *conspiracy*. In fact, in the case *Applied*
20 *Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 510-11 (1994) the Court explained
21 that civil conspiracy is: **"not a cause of action, but...a legal doctrine that imposes**
22 **liability on persons who, although not actually committing a tort themselves, share**
23 **with the immediate tortfeasors a common plan or design in its perpetration."**

24 Civil Conspiracy is commonly litigated in California courts. To support claims of civil
25 conspiracy CA Civil Jury Instructions (CACI) 3600 provides juries the factual elements of
26 conspiracy. These elements are:

26 [Name of plaintiff] claims that [he/she] was harmed by [name of
27 coconspirator]'s [insert tort theory] and that [name of defendant] is
28 responsible for the harm because [he/she] was part of a conspiracy to commit

[insert tort theory]. A conspiracy is an agreement by two or more persons to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the conduct of the parties. If you find that [name of coconspirator] committed [a/an] [insert tort theory] that harmed [name of plaintiff], then you must determine whether [name of defendant] is also responsible for the harm. [Name of defendant] is responsible if [name of plaintiff] proves both of the following:

1. That [name of defendant] was aware that [name of coconspirator] [and others] planned to [insert wrongful act]; and
2. That [name of defendant] agreed with [name of coconspirator] [and others] and intended that the [insert wrongful act] be committed. Mere knowledge of a wrongful act without cooperation or an agreement to cooperate is insufficient to make [name of defendant] responsible for the harm.

A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged coconspirators. [Name of plaintiff] is not required to prove that [name of defendant] personally committed a wrongful act or that [he/she] knew all the details of the agreement or the identities of all the other participants.

Both the recognition of conspiracy as a legal doctrine with imposition of liability on defendants found guilty of this infraction, AND the provision for California juries of the factual elements of conspiracy, in CACI 3600, makes conspiracy virtually a Cause of Action in California, in force and effect.

More importantly, the final passage from the CACI 3600 jury instructions (above in bold), confirms that not only are the necessary elements of civil conspiracy present in this matter, but **the Plaintiff does NOT need to prove any Defendant committed any wrongful act**, AND it makes it clear that **a jury may INFER a conspiracy from factors such as circumstances, the nature of the acts done, the relationships between the parties, and the interests of the alleged co-conspirators.**

The Plaintiff's FAC carefully includes the details of the conspiracy necessary to establish these circumstances, Defendant relationships, nature of the acts, and the shared interests of the Defendants, to help the Court and the jurors comfortably decide in the Plaintiff's favor.

**3B. DEFENDANTS’ FALSELY CLAIM THAT THERE IS NO UNDERLYING
TORT TO SUPPORT A CIVIL CONSPIRACY CLAIM**

Although the Defense Counsel claims either there was no underlying tort in the conspiracy, or there was no *stated* or *claimed* tort (as if hopeful to cheat justice by virtue of some insignificant technicality), their clients understand there was the very real underlying tort of Copyright Infringement still unresolved in the Prior Action, AND the very real possibility that at any minute the Plaintiff might discover the Breach of Contract and Fraud hidden in the TriggerStreet contracts (and in Def Spacey’s travels to Spain and London to recruit new international members) which would trigger a Breach and Fraud Cause of Action. These facts, and the almost inevitable discovery that the TS had been secretly promoting their social network overseas, and unlawfully distributing the Plaintiff’s work in foreign markets, could trigger a Copyright Infringement action at any moment. Thus, depending on the application of law, there was at least one (1) active underlying tort, and potentially 12 new underlying torts—validating an action for conspiracy in California.

4. DEFS FALSE CLAIM CALIFORNIA DOES NOT RECOGNIZE SPOILIATION

The Defendants falsely claim that California does not recognize spoliation actions..But, in fact, California allows spoliation claims (per *Cedars-Sinai Med. Ctr. v Superior Court* (1988) 18 C4th 1, 17, 74 CR2d 248), **in cases such as this**, when:

- a. the spoliator is not a party to the lawsuit, but a third party with a duty to preserve the evidence (**Spacey and Brunetti were not parties of Briggs v Blomkamp**); or
- b. when the spoliation victim does not learn of the spoliation until after trial or a decision on the merits.

Again, consistent with these requirements **(a)** the Defendants accused of Spoliation (Spacey and Brunetti) were not parties of Briggs v Blomkamp; and **(b)** the Plaintiff learned 15 months after the Briggs v Blomkamp decision.

Therefore, the action for *spoliation* can proceed in California.

Additionally, California Civil Jury Instruction 204 instructs juries on the elements of spoliation:

204. Willful Suppression of Evidence:

You may consider whether one party intentionally concealed or destroyed evidence. If you decide that a party did so, you may decide that the evidence would have been unfavorable to that party.

—CA Civ Jury Instructions, 204

Therefore, again, the action for spoliation can proceed in California.

**5. DEFENDANTS ASSERT THAT THE FAC FAILS TO ALLEGE ANY
CONDUCT BY NBCU THAT SUPPORTS A NEGLIGENCE CLAIM**

The FAC, and pages 7-12 of this Memorandum, show that Def Universal Pictures and/or NBCU engaged in the following activities:

1. Def Universal Pictures (NBCU) hired Def Mordecai Wiczky the year after Wiczky published his notoriously unethical “memo,” in which he openly discussed how to undermine California labor laws, to “double” profits by acting as both producers and talent agents. This was reckless and negligent.
2. The FAC shows Def Universal Pictures (NBCU) hired Def Wiczky because Universal was in last place among the big studios—for 3 consecutive years). The FAC explains that Wiczky predicted the studio in last place would “break ranks” to implement his unethical business model. This was recklessly negligent.
3. Def Universal Pictures helped, and conspired with, other Defendants to distribute, produce and profit from films and television shows that were not their rightful intellectual property. This was reckless and negligent.
4. Def Universal Pictures (NBCU) originally planned to co-finance (with Def Sony Pictures) and distribute Elysium, a film that may infringe of the Plaintiff’s work.
5. The FAC shows Def Universal Pictures gave Defs MRC, Spacey and Brunetti unusually large contracts and/or opportunities, that no other companies were willing to offer these Defendants.
6. The FAC shows Def Universal Pictures (NBCU) allowed Def Ari Emanuel to use it (Universal Pictures) as a safety net, to hedge Emanuel’s bets and drive up the bidding price of his films. This was reckless, corrupt and negligent.

**6. THE FAC DOES NOT ALLEGE ANY CONDUCT BY NBCU
VIOLATING THE LABOR CODE**

The FAC shows that Def Universal Pictures (NBCU) hired Def Mordecai Wiczuk the year after Wiczuk published his notoriously unethical “memo,” in which he openly discussed a way to circumvent California labor laws, to “double” profits by acting as both producers and talent agents. The FAC explains that Def Wiczuk predicted that whichever studio was in last place among the big studios would try the plan contemplated in his “memo”. Universal was in last place the previous 3 years before hiring Wiczuk.

The Plaintiff believes (as would any reasonable reader of the FAC or these facts) that upon hiring Def Wiczuk, Universal Pictures implemented the unethical business structure contemplated in Wiczuk’s “memo,” and that business structure endures at Universal Pictures to this day. This is why, as explained in the FAC, Def Universal Pictures made a 20 picture mega-deal with Def MRC. And just as the FAC explains that Defs Emanuel and Sony Pictures’ CEO are secretly business partners in Sceenbid, and just as Defs Emanuel, Satchu and Wiczuk are co-owners of MRC, and just as Def Wiczuk and Satchu own shares of Def Emanuel’s WME, Universal Pictures’ executives owns a shares of MRC and WME; thus they all profit as agents and employers, in violation of California Labor Code § 1700.39.

7. RULE 8 THE FAC FAILS TO STATE A PLAUSIBLE CLAIM AGAINST NBCU

The Def NBCU’s claim that **The Fac Fails To State A Plausible Claim Against NBCU** is a clear, honest, and grandiose statement that Def NBCU believes that: its colossal size makes it somehow above the law, and no reasonable person could ever make a plausible claim against NBCU, because its polished corporate veneer inoculates it from any failings of its fallible executives. But the Court sees through this hubris.

This defense is just a slightly altered iteration of the Defendants’ Motion to Dismiss’ first (I) and fifth (V) defenses, which have been thoroughly addressed herein.

The Plaintiff’s FAC stated numerous plausible claims against the Defendant NBCU.

The Plaintiff asks the Court to see pages 8-12 and 19, of this Opposition, to review Plaintiff’s clear claims against Defendants Universal Pictures, and NBCUniversal.

CONCLUSION

For the foregoing reasons, the Plaintiff respectfully asks the Court to deny the Defendants' Motion To Dismiss and Memorandum Of Points And Authorities.

Dated: January 30, 2018

Respectfully Submitted,

By: /s/ Steve Wilson Briggs

Steve Wilson Briggs

Plaintiff, In Propria Persona